



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 04, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 23, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Child/Adolescent Day Treatment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.

- [REDACTED]
2. The Medicaid program approved and paid for child/adolescent day treatment for the petitioner from March 12 through June 15, 2015.
 3. On June 8, 2015, the petitioner with Northwest Journey, Hayward, requested CADT five hours a day, five days a week from June 13 through September 13, 2015, at a cost of \$26,000. The Office of Inspector General denied the request on July 1, 2015. The petitioner has received the services.
 4. The petitioner is diagnosed with an adjustment disorder, an emotional/conduct disorder, and attention deficit with hyperactivity disorder. There is also some evidence he has a pervasive development disorder.
 5. The petitioner was sexually abused by an adult male when he was about 10 years old.
 6. The petitioner is 16 years old.
 7. Northwest Journey's plan of care for the petitioner was as follows:
 - a) Individual Counseling: 1 hour weekly by a Mental Health Clinician
 - b) Group Counseling: 5 hours daily by a Mental Health Professional. Areas targeted include: anger management, emotional development, positive coping skills, conflict resolution, adult/authority figure communication skills, appropriate peer interaction, independent living skills, and positive relationship development.
 - c) Medication Monitoring: monthly and as needed, by a Registered Nurse
 - d) Occupational, Recreational, Art or Music Therapy: 2 hours weekly by a certified provider
 - e) Educational Services: 55 minutes daily by a licensed teacher
 - f) Family Counseling Sessions: as needed by a Mental Health Clinician
 - g) Case Management Services: 30 minutes weekly by a qualified Case Manager
 - h) Clinical Team Reviews: once per month or more frequently if indicated by the client's condition or requested by a multi-disciplinary team member
 8. The requested treatment is not a cost-effective means of meeting the petitioner's needs.

DISCUSSION

The petitioner and his provider, Northwest Journey, Hayward, seek reimbursement for 13 weeks of Child/Adolescent Day Treatment Services (CADT) services provided at a cost of \$26,000 from June 13, 2015, through September 15, 2015. These services are available to children with "a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). The Office of Inspector General denied the request after determining that the petitioner did not establish that he had a severe emotional disorder, that he did not establish the treatment was consistent with his needs, and CADT does not cover treatment for a pervasive development disorder.

I will address the last concern first. Treatment for pervasive development disorders, which include autism, is considered an habilitative as opposed a rehabilitative service and is not covered under 42 USC §1396d(a)(13). But the cited section does not specifically bar medical assistance payment for habilitative services; rather it states that medical assistance does cover the following services, which include rehabilitation services:

other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

Because the statute specifically indicates that rehabilitative services (including those needed for the reduction of a mental disability) are covered, mental health services are covered if the primary component is rehabilitative, even if it includes an habilitative component. Although the petitioner probably has a pervasive development disorder, his primary diagnoses are an adjustment disorder, an emotional/conduct disorder, and attention deficit with hyperactivity disorder. Furthermore, when the Office of Inspector General reviewed another request for the same services three months earlier, it approved the request. There is no evidence that his diagnosis has changed since then, so if his autism did not disqualify him then, it should not do so now.

A severe emotional disturbance occurs when a person has emotional and behavioral problems that meet the following criteria:

- a. Are expected to persist for at least one year;
- b. Have significantly impaired the person's functioning for 6 months or more and, without treatment, are likely to continue for a year or more. Areas of functioning include: developmentally appropriate self-care; ability to build or maintain satisfactory relationships with peers and adults; self-direction, including behavioral controls, decisionmaking, judgment and value systems; capacity to live in a family or family equivalent; and learning ability, or meeting the definition of "child with exceptional educational needs" under ch. [PI 1](#) and s. [115.76 \(3\)](#), Stats.;
- c. Require the person to receive services from 2 or more of the following service systems: mental health, social services, child protective services, juvenile justice and special education; and
- d. Include mental or emotional disturbances diagnosable under DSM-III-R. Adult diagnostic categories appropriate for children and adolescents are organic mental disorders, psychoactive substance use disorders, schizophrenia, mood disorders, schizophreniform disorders, somatoform disorders, sexual disorders, adjustment disorder, personality disorders and psychological factors affecting physical condition. Disorders usually first evident in infancy, childhood and adolescence include pervasive developmental disorders (Axis II), conduct disorder, anxiety disorders of childhood or adolescence and tic disorders.

Wis. Admin. Code, § DHS 40.03(24), *citing* § DHS 107.32(1)(a)2.

The prior authorization request form includes a list of criteria in the form of a checklist that the recipient must meet to be considered to have a severe emotional disturbance. To meet the standard, he must have one of the listed symptoms or two of the listed functional impairments. Northwest Journey did not list one of the symptoms or two of the functional impairments. The Office of Inspector General also points out that it did not document any behavior in the last three months that met the severe emotional development criteria.

Although I agree that this deficiency exists, I will not deny the request on that ground. The testimony indicated that the petitioner was sexual abuse when he was about 10 years old by an older male who went to prison for similar acts. During the period covered by the current request the petitioner yelled and swore at staff and peers, slammed and kicked a door, punched a hole in his bed, hit a resident, was sanctioned and put on a 72-hour hold by juvenile authorities, urinated on the floor, and threw an object at another resident. The Office of Inspector General accepted that the petitioner had a severe emotional disturbance when it approved his previous request. Although the current request is deficient, the evidence indicates that this disturbance continues.

The question is whether he and Northwest Journey have established that his current request meets his needs and the various remaining legal criteria set for the program.

Each child seeking CADT is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the “limitations imposed by pertinent...state...interpretations.” Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Adm. Code § DHS 101.03(96m) as a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

To receive adolescent day services potential recipients must meet the pertinent interpretation of the requirements found at *Wisconsin Medicaid and BadgerCare Update* No. 96-20. It states:

Child/adolescent day treatment services are covered when the following are present:

- Verification that a HealthCheck screen has been performed by a valid HealthCheck screener dated not more than one year prior to the requested first date of service (DOS).
- A physician's prescription/order dated not more than one year prior to the requested first DOS.
- Evidence of an initial multidisciplinary assessment that includes all elements described in HFS 40.09, Wis. Admin. Code, including a mental status examination and a five-axis diagnosis.
- The individual meets one of the following criteria for a determination of “severely emotionally disturbed” (SED):
 - Is under age 21; emotional and behavioral problems are severe in degree; are expected to persist for at least one year; substantially interfere with the individual's functioning in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life; and cause the individual to need services from two or more agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health.
 - Substantially meets the criteria previously described for SED, except the severity of the emotional and behavioral problems have not yet substantially interfered with the individual's functioning but would likely do so without child/adolescent day treatment services.

- Substantially meets the criteria for SED, except the individual has not yet received services from more than one system and in the judgment of the medical consultant, would be likely to do so if the intensity of treatment requested was not provided.
- A written multidisciplinary treatment plan signed by a psychiatrist or clinical psychologist as required in HFS 40.10, Wis. Admin. Code, that specifies the services that will be provided by the day treatment program provider, as well as coordination with the other agencies involved.
- Measurable goals and objectives that are consistent with the assessment conducted on the child and written in the multidisciplinary treatment plan.
- The intensity of services requested are justifiable based on the psychiatric assessment and the severity of the recipient's condition.

The regulation that the provider have a psychologist or psychiatrist evaluate each child and that it then approve a treatment plan for that child requires it to tailor its program to each child. Northwest Journey's set the following plan of care for the petitioner:

- a) Individual Counseling: 1 hour weekly by a Mental Health Clinician
- b) Group Counseling: 5 hours daily by a Mental Health Professional. Areas targeted include: anger management, emotional development, positive coping skills, conflict resolution, adult/authority figure communication skills, appropriate peer interaction, independent living skills, and positive relationship development.
- c) Medication Monitoring: monthly and as needed, by a Registered Nurse
- d) Occupational, Recreational, Art or Music Therapy: 2 hours weekly by a certified provider
- e) Educational Services: 55 minutes daily by a licensed teacher
- f) Family Counseling Sessions: as needed by a Mental Health Clinician
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This plan is identical down to the capitalization and punctuation to one proposed for another petitioner and found in a decision issued three years ago. *DHA Decision No.* [REDACTED] It even targets the same eight areas in group counseling. I find it unlikely that two recipients, even if they both have severe emotional disturbances, will require exactly the same treatment. Rather it appears that Northwest Journey uses exactly the same plan for each resident. I am aware that it has a basic program it provides to those it cares for. But what is the purpose of an evaluation if it is going to have no effect on the treatment? If the program is the same for everyone, it cannot be consistent with what the petitioner in particular needs to treat his mental health problems; nor can it be of proven medical value. Both of these which are necessary for the treatment to be considered medically necessary.

At \$2,000 a week, or over \$100,000 a year, this program is expensive. I will assume that the one hour of individual therapy Northwest Journey provides to the petitioner is effective, but they have the burden of proving that the entire program is effective. Nothing in the documentation includes any proof that the other 24 hours of care listed in the canned plan does anything to help him. Spending \$2,000 for the single hour of individual therapy is not a cost-effective use of medical assistance dollars. This does not mean that the other facets of Northwest Journey's plan can never help those with severe emotional problems. But Northwest Journey cannot just prove that the program will help some people some of the time; rather it must establish that this particular treatment provides a way for this particular petitioner to overcome his particular mental health deficits. It has not done so.

Northwest Journey and the petitioner's representatives argue that the progress he has made prove that the therapy has been effective. But the progress they speak of is solely in his ability to open up and talk about his poor behavior and his own victimization when he was sexually abused. For the last three or four months, he has been on a "downward trend" in which he committed the behavior discussed earlier. It is

important that he open up and understand his problems, and I am aware that those who are abused often act worse before they get better. But this does not relieve him of proving that the therapy he receives is cost-effective. For the reasons already pointed out, and because his improvement has been limited, he has not done so.

CONCLUSIONS OF LAW

The petitioner and his provider have not proven by the preponderance of the credible evidence that the requested CADT services are not medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

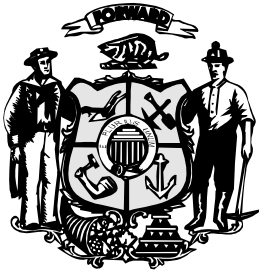
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of October, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 23, 2015.

Division of Health Care Access and Accountability